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*** Legislation is current through the 2012 Fiscal Session and updates ***
*** received from the Arkansas Code Revision Commission through ***
*** August 1, 2012. ***

Title 20 Public Health And Welfare
Subtitle 2. Health And Safety
Chapter 17 Death and Disposition of the Dead
Subchapter 9 -- Cemeteries Generally

A.C.A. § 20-17-906 (2012)

20-17-906. Disposition of abandoned cemetery lots.

(a) As used in this section, "lot" means any lot or portion of a lot in a cemetery owned by a county or municipality which has not been used for the interment of human remains and for which no provision for perpetual care was made at the time the lot was sold or at any time subsequent to the time the lot was sold.

(b) The governing body of any county or municipality or other officials having control over a cemetery may maintain in the circuit court in the county within which the cemetery is located a proceeding for the termination and forfeiture of the rights and interests of an owner of any lot or lots in the cemetery whenever the present owner of the lot is unknown to the governing body of the county or municipality or other officials and a period of at least seventy-five (75) years has passed since any portion of the lot has been used for interment purposes.

(c) (1) The proceeding shall be commenced by the filing of a verified petition with the clerk of the circuit court.

(2) The petition shall:

(A) Identify the lot or lots;

(B) State that the portion of the lot to be reclaimed has not been used for the interment of human remains and that a core or sound test has been conducted to determine that the portion contains no remains;

(C) State that the present owner of the lot is unknown to the governing body of the county or municipality or other officials having control over the cemetery;

(D) State that a period of at least seventy-five (75) years has passed since any portion of the lot was used for interment purposes; and

(E) Request that the court issue an order declaring the lot abandoned and further declaring all of the rights and interests of the owner terminated and forfeited.

(3) The petition shall be accompanied by an affidavit by the governing body of the county or municipality or other officials that a diligent search to locate the present owner of the lot has been made but that the owner has not been located.

(d) Upon the filing of the petition and affidavit, the clerk of the circuit court shall fix a time for a hearing on the petition not less than thirty (30) days nor more than ninety (90) days after the date of the filing.

(e) (1) The governing body of the county or municipality or other officials shall give notice of the

(e) (1) The governing body of the county or municipality or other officials shall give notice of the hearing:

(A) By posting copies of the notice in three (3) conspicuous places in the cemetery which is owned or operated by the governing body or other officials;

(B) By mailing a copy of the notice by registered mail to the last known owner of the lot; and

(C) By publishing the notice one (1) time each week for three (3) successive weeks in some newspaper of general circulation in the county within which the cemetery is located, the first publication being made not less than thirty (30) days before the date of hearing.

(2) The notice shall identify the lot and shall state:

(A) The name and address of the last known owner of the lot;

(B) That a hearing will be held to determine whether or not the present owner of the lot shall have his or her right and interest terminated and forfeited by a declaration of abandonment of the lot; and

(C) The time and place of the hearing.

(f) If upon the hearing the court determines from the evidence presented that the present owner of the lot is unknown, that the governing body or other officials have made a diligent search to locate the present owner, that a period of seventy-five (75) years or more has passed since any portion of the lot has been used for human interment, and that a core or sound test has been conducted to determine that the lot contains no remains, then a decree shall be entered adjudicating the lot, lots, or parts thereof, to have been abandoned and, further, ordering the subsequent termination and forfeiture of all rights and interests of the owner.

(g) The court shall dismiss the proceeding if it determines any of the following from the evidence which is presented:

(1) That any of the material facts stated in the petition are not true;

(2) That the identity of the present owner of the lot is known; or

(3) That the governing body or other official has not made a diligent search to locate the present owner.

(h) (1) Upon order of the court declaring the lot to be abandoned, the full title to the lot shall revert to the cemetery.

(2) The order of the court shall not become final until one (1) year after the date on which it is entered. During that time, any person may petition the court to reopen the proceeding, and the court, after notice to the governing body or other officials, may reopen the proceeding and may hear and consider any additional evidence regarding the ownership of the lot and may modify or amend the order which it made or, if the court makes any of the determinations under subsection (g) of this section, it shall dismiss the proceeding.

(i) (1) Within thirty (30) days after the date on which the court order is entered, the governing body or other officials shall publish notice of the order:

(A) One (1) time in a newspaper of general circulation in the county in which the cemetery is located; and

(B) By mailing a copy of the order by registered mail to the last known owner of the lot or to the last known owner of the right of interment in the lot.

(2) The notice which is mailed and published shall identify the lot which is covered by the order and shall state:

(A) The name and address of the last known owner of the lot;

(B) That the court has ordered that the lot is to be declared abandoned and that the court has further ordered that the rights and interests of the owner are to be subsequently terminated and forfeited; and

(C) The date upon which the order of the court will become final.

(j) The lot shall be deemed abandoned, and the rights and interests of the present owner shall be terminated and forfeited as of the date upon which the order of the court becomes final. Thereafter, the cemetery shall be the owner of the lot and may resell or otherwise recover it.

(k) The proceeds derived from any sale of a lot, the ownership of which is obtained as provided in this section, shall be used as follows:

(1) First, to reimburse the petitioner for the costs of suit and necessary expenses including attorneys' fees incurred by the petitioner in the proceeding;

(2) Then, of the remainder of the proceeds:

(A) Not less than seventy-five percent (75%) shall be held in trust and shall be used only for expenses of administration, maintenance, restoration, preservation, and other improvements of the cemetery; and

(B) Any amounts remaining thereafter shall be used for immediate improvements and maintenance of the cemetery.

(l) In no event shall any existing monument, retaining wall, fence, bench, or other ornamentation be altered or removed by the petitioner or his or her agent or employee or by any subsequent owner of a lot reclaimed and sold as provided in this section.

HISTORY: Acts 1995, No. 464, § 1.